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2 you would be interested in procuring is SMDS at
3 56 kilobytes per second. So it seems to me that
4 there is a technology plan out there where this
5 might be one small component. And probably the
6 vast majority of the component in your technology
7 plan would be covered by the FCC Universal
8 Service Fund.

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2 Q Is it your recommendation to me
3 that I respond to the people in our town by
4 saying that we really shouldn't bother with the
5 discount provided under ONJ, that on the whole we
6 would be better to go through the application
7 process at the Federal Communications Commission?

8 A No. I think what you need to do
9 is set up the application as if you were going to
10 buy 100 percent of the components utilizing the
11 federal discount and then to the extent that this
12 Schedule A discounts are more attractive on a
13 line item basis, substitute those.

14 Q And if the school district were to
15 do that, would it be your recommendation that I
16 say that the price that we should list as the
17 price from which we are seeking discount is what
18 is listed here in your tariff rates?

19 A Yes, it is.

20 Q And so we still haven't answered
21 the first question to the Board Attorney about
22 perpetrating any kind of fraud?

23 A Excuse me?

24 Q Go ahead.

25 A Fraud is kind of an ugly word.

2 Q It absolutely is.

3 A We have already stated I'm not an
4 attorney so I can't discern fraud and non-fraud
5 in the context of contract law, but I find it
6 highly unlikely that a corporation with the
7 integrity of Bell Atlantic would knowingly
8 perpetrate fraud on anybody.

9 Q I'm not suggesting that Bell
10 Atlantic was perpetrating fraud. I'm concerned
11 that my school board attorney would be concerned,
12 I would imagine, that if he were to ask, if the
13 superintendent of schools were asked to report a
14 number up to the Federal Communications
15 Commission, which did not accurately reflect the
16 price, he would be concerned about his committing
17 a fraud.

18 A I understand your point and revise
19 my remarks to, I don't believe Bell Atlantic
20 would be a party to somebody committing a fraud.

21 Q All right. Now I believe it was
22 in response to questions by Mr. Laskey that you
23 talked about the requirement that the Federal
24 Communications Commission may order that a
25 bidding process take place?

2 A Yes.

3 Q Would you agree with me that the
4 logical purpose for putting a project out to bid
5 is to obtain the best price available for goods
6 or services?

7 A Yes.

8 Q And that in response to those
9 bids, you would expect to be told what that price
10 would be?

11 A Yes.

12 Q And are you aware that in the
13 State of New Jersey with respect to public
14 agencies where there are laws which govern the
15 bidding process?

16 A I do not have any personal
17 familiarity with the laws, but I would be
18 surprised if they did not exist.

19 Q And is it your testimony that in
20 response to, I believe it's your testimony, and
21 correct me if I'm wrong, in response to a request
22 for proposed bids on the provision of, let's say,
23 56 kilobytes per second, SMDS service, that our
24 school district would be told by Bell Atlantic-
25 New Jersey that its bid is \$225, is that correct?

2 A Yes.

3 Q And let's assume that AT&T comes
4 in and says, well, we're going to bid \$180 and
5 let's assume further that MCI through some better
6 match comes in and says we're going to \$165 and
7 our school board attorney has a bidding process
8 and he opens the bid. Who should get the bid?

9 Assuming, of course, pardon me,
10 assuming of course all are equally qualified to
11 provide the service and there's no other
12 detriment to the award of the contract?

13 A Obviously, this situation is more
14 complicated than a traditional bidding process
15 where the prediscount rate would be the basis for
16 making the selection. You have got to follow
17 through and take a prediscount rate and multiply
18 by the appropriate discount and I would assume
19 all other factors being equal, that a rational
20 school would select the lowest possible discount
21 rate.

22 Q How would you propose on such a
23 response that Bell Atlantic would announce that
24 as part of the bid submission?

25 A I think I have already answered to

2 the best of my knowledge these sorts of discounts
3 will be available to the public. They will be
4 available on the internet and they will be an
5 integral part of the bidding process.

6 Q So that when a school board
7 attorney opens the bids he's got to know to look
8 on the internet, for example?

9 A If he wants to make a rational
10 choice and do what's best for his school, he
11 needs to know there are alternative discounts out
12 there to the ones in the FCC Universal Service
13 matrix.

14 Q In your view are MCI and AT&T in
15 this scenario bound by any provision of law, if
16 you know, that are "pro tariff rates"?

17 A As soon as you interjected the
18 phrase provision of law, I'm not qualified to
19 answer the question.

20 Q All right. That's fair.

21 In your scenario, could MCI have
22 bid \$165, say, but that's not our real bid? If
23 you look on the internet you will find we charge
24 \$110? Can we do that?

25 A I don't believe they can do that,

2 Q Mr. West, you have been involved
3 in this process for some time. In your review of
4 the FCC Order, is it your feeling, your opinion
5 that the FCC contemplated that the bidding
6 process that it directs in its Order would mean
7 the opening of bids supplemented by something
8 else?

9 A I honestly don't believe the FCC
10 contemplated the eventuality at all.

11 Q And just so that I understand it
12 correctly, if for some reason our school district
13 decided that because there was better discounts
14 available under the federal program that the
15 retention of the administrative overhead, and we
16 run a very lean school district, I'm asking you
17 to assume the administrative overhead is worth
18 the bother of filling out the federal application
19 forms and doing all of the things necessary to
20 apply, assuming that's the case and assuming that
21 one of the elements that's included is the SMDS
22 56 kilobyte per second service.

23 You would advise me to advise our
24 school board attorney to say that the price from
25 which the discount we are seeking is to be filled

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2 in at \$225 even though we all know that it's \$100
3 that we're going to pay under this plan, is that
4 what you're asking me to do?
5 A Yes and that's the consequence of
6 having alternative discounts in the marketplace
7 and certainly the funding administrator is going
8 to be aware of such a situation.
9 MR. PERKINS: I don't think I have
10 any more questions of Mr. West.
11 Thank you.
12 COMMISSIONER ARMENTI: Thank you,
13 Mr. Perkins.
14 Ms. Coogan?
15 MS. COOGAN: No questions, thank
16 you.
17 COMMISSIONER ARMENTI: Mr.
18 Blandino?
19 MR. BLANDINO: No questions.
20 COMMISSIONER ARMENTI: Ms.
21 Gilbert?
22 MS. GILBERT: Thank you,
23 Commissioner.
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CROSS-EXAMINATION

BY MS. GILBERT:

Q Mr. West, if I could direct you to Page 2 of your rebuttal testimony?

A Okay.

Q At the top of that page beginning at Line 3 where the paragraph ends, you state: "There is no evidence that the federal funds will provide insufficient support for New Jersey schools and libraries, a universal discount", is that correct?

A Yes, I do.

Q Mr. West, are you aware of any language in the FCC Order that guarantees that every application for funding will be granted?

A No, I'm not, but I am aware of the language in Paragraph 541, which would seem to indicate that the FCC believes that \$2-1/4 billion is sufficient.

Q Mr. West, are you familiar with the recent public notice that was issued by the FCC on September 10th, which I believe was moved into evidence as Bell Atlantic Exhibit 137?

A Yes, I've read that.

2 Q And you're aware, I assume, that
3 one of the issues that the FCC commented on in
4 that notice is the possibility of exhaustion of
5 those funds before all the applications are
6 granted?

7 A Sure. Any time you have a cap,
8 there is a technical possibility, and there can
9 be some queue anxiety and to me that doesn't
10 translate into any inferences or evidence that
11 the cap will be reached.

12 Q So you believe the cap will not be
13 reached?

14 A That's correct.

15 Q Is that a personal view or is it
16 a corporate view of Bell Atlantic?

17 A It's a corporate view of Bell
18 Atlantic.

19 Q Does Bell Atlantic plan to make
20 any comments to the FCC on the issue of the
21 potential exhaustion of funds?

22 A I'm sorry, I don't know.

23 Q Mr. West, still on Page 2 of your
24 rebuttal. If we can go to Line 11.

25 A Okay.

Q You state that there is no reason to expect that our schools and libraries will not follow through with timely requests for the discount?

A Yes, I see that.

Q Can you tell me what your definition in that next sentence is of the word "timely"?

A I think that's a first come/first serve environment. "Timely" probably translates into as soon as possible.

Q Meaning as soon as possible as the FCC application is made available?

A Yes.

Q And is it your understanding that that application has not been made available as of yet?

A That's correct.

Q Are you aware of when it might be made available?

A My understanding is some time in November.

Q Are you aware of the review process that is going to take place in New Jersey

2 before any school districts are able to make an
3 application for funding to the FCC?

4 A No, I'm not.

5 Q Are you aware of the requirement
6 that each school has to file a technology plan
7 with their application for federal funding?

8 A Each school district or each
9 school?

10 Q Yes.

11 A Yes, I am.

12 Q Are you aware of whether those
13 technology plans must be reviewed by the State
14 before they're submitted to the FCC?

15 A Yes. The Order says that they
16 would appreciate or insist that somebody in the
17 State certify that the technology plans are
18 reasonable.

19 Q And what in your opinion is the
20 review process for the State of New Jersey before
21 the schools can apply for funding?

22 A Well, obviously, some State
23 Agencies, presumably the Department of Education,
24 will act as a gateway and the technology plans
25 will have to pass through that gateway before

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2 they make it to the FCC application process.

3 Q Are you aware of how long that
4 review process will take for the DOE to process
5 those technology plans?

6 A No.

7 Q Are you aware that they have
8 approved any technology plans as of yet?

9 A It's been my understanding that
10 there are plans out there today whereby school
11 districts receive funding and technology plans
12 would have a requirement to garner that funding
13 and those technology plans are transferrable.

2 Q Are you aware of whether every
3 school district in the State has received an
4 approved technology plan from the New Jersey
5 Department of Education at this point in time?

6 A No, I'm not.

7 Q Are you aware of when school
8 districts can reasonably be expected to get
9 approval of those technology plans from the DOE?

10 A I would imagine that given the
11 states that the DOE would expedite that process,
12 would provide that approval as swiftly as
13 possible.

14 Q Does the ability of the New Jersey
15 State Department of Education to process those
16 applications as soon as possible, doesn't
17 necessarily result in an application being timely
18 filed with the FCC?

19 A If you operate under the
20 assumption that \$2-1/4 billion cap is not going
21 to be reached and that's our operating
22 assumption. I don't envision a circumstance
23 where if an application wasn't there 15 seconds
24 after you were able to file them, that a relevant
25 school district or school will ultimately be

2 deprived of their funding.

3 Q I'm sorry, could you repeat that?
4 It was not clear.

5 A Not on a bet.

6 MS. GILBERT: Would you read back
7 the answer?

8 (Whereupon, the pending answer was
9 read back by the Court Reporter.)

10 Q Has Bell done any studies to
11 justify that conclusion, that the cap will not be
12 reached?

13 A Bell, I don't think has enough
14 data at its disposal to absolutely declare one
15 way or the other, but I think it's interesting
16 that the Ratepayer Advocate's position is that
17 \$40.1 million is required and we already
18 discussed this this morning that something on the
19 order of \$80 million will be collected.

20 One could infer from that if that
21 relationship stood throughout the country, there
22 would be no problem with the \$2-1/2 billion cap.

23 Q I'm not sure if that was the
24 answer to my question.

25 MS. GILBERT: Could I have the

2 question read back, please?

3 (Whereupon, the pending question
4 was read back by the Court Reporter.)

5 THE WITNESS: I believe I did.

6 I said we did not have at our disposal all
7 the information that would be required to
8 make a comprehensive study would strike me
9 as being tantamount to predicting the
10 future, but I did give you one insight in
11 the answer to that question by giving you
12 the relationship between what the
13 Ratepayer Advocate feels they need for
14 their education initiative and how much
15 money would be collected from New Jersey
16 telecommunication customers at the \$2.25
17 billion funding level.

18 BY MS. GILBERT:

19 Q So to be clear, your answer is
20 Bell Atlantic has not done a study to determine
21 whether the cap will be reached?

22 A That's correct.

23 Q So then you have no data to
24 support that conclusion that the cap will or will
25 not be reached at this point?

2 A No, that's not true either. We
3 can have data and you can draw inferences and you
4 can make conclusions without performing a
5 comprehensive study that it's absolutely 100
6 percent infallible in a mathematic, calculus,
7 physics sense.

8 Q Are you aware if any entity has
9 performed such a study that would guarantee 100
10 percent that the cap will not be reached?

11 A No. No entity can guarantee
12 anything, but certainly the FCC when establishing
13 the cap at \$2-1/4 billion relied on a number of
14 studies and inputs from a number of experts and
15 this is a torturous process that went on there
16 were thousands and thousands and thousands of
17 pages of comments. So, it's unfair to
18 characterize the \$2-1/4 billion as an arbitrary
19 number and it is a number that the FCC Order
20 reflects as the FCC sincerely believes as an
21 adequate amount.

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2 Q And that is notwithstanding the
3 first come/first serve requirement of the fund?

4 A That is correct.

5 Q And that is notwithstanding the
6 recent FCC public notice where they bring in the
7 question of the possibility of the exhaustion of
8 funds?

9 A I think it's more correct to say
10 they brought into question in the event that that
11 were to occur what would we do, and they have
12 attempted to respond to what I am sure is a fair
13 amount of anxiety surrounding the first
14 come/first serve rule.

15 I don't in any way see that
16 translating into an indictment against the \$2.25
17 billion as being a sufficient level.

18 Q I don't recall using the word
19 "indictment", Mr. West, against the \$2.25 billion
20 cap.

21 I think my question was simply
22 whether Bell Atlantic had any data or study to
23 support your theory that the \$2.25 billion would
24 not be reached.

25 MR. DENNEHY: I think that's been

2 asked and answered.

3 MS. GILBERT: I was just stating
4 for the record my characterization of the
5 \$2.25 billion just to be clear that I had
6 not in any way, shape or form discussed
7 it as an indictment.

8 Q Mr. West, could we go to page 3 of
9 your rebuttal, please.

10 A Sure.

11 Q On the question on page 3, I
12 believe you discussed several different sources
13 of funding for schools and libraries in the State
14 of New Jersey. Is that correct?

15 A Yes.

16 Q One of the sources you mentioned
17 is - - I'm sorry, is it your testimony that the
18 sources of funding that are mentioned in that
19 question will create affordable access from
20 schools and libraries to telecommunication
21 services in New Jersey?

22 A It's my testimony that they will
23 help.

24 Q In that question you mentioned the
25 educational technical training centers grant

2 program. Is that correct?

3 A Yes.

4 Q Are you aware of whether the \$10
5 million that will come from that program is
6 available to assist schools and libraries with
7 purchasing telecommunication services, internet
8 access or internal connections?

9 A No. My understanding of that \$10
10 million is that it's teacher support.

11 Q So that the \$10 million in aid
12 from that particular program were not provided to
13 assist schools and libraries for any of the areas
14 that are covered by the Federal Universal Service
15 Fund. Correct?

16 A Well, that's correct, but going
17 back to your technology plans, those are
18 comprehensive documents that certainly call for
19 teacher training initiatives and I am simply
20 pointing out a supply of money is already on the
21 table and available for those sorts of
22 initiatives.

23 Q But that initiative is not
24 included as one of the ones that is supported by
25 the Federal Universal Service Fund, correct?

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2 A That's correct.

3 Q Mr. West, I'd like to go to page 2
4 of your rebuttal.

5 A Okay.

6 Q At line 14, you refer to the
7 establishment of a state fund being equivalent to
8 introducing a tax. Is that correct?

9 A Yes, I do.

10 Q Mr. West, are you familiar
11 generally with the provisions of providing
12 Universal Service under the Federal
13 Telecommunications Act of 1996?

14 A Yes, I've tried to review those
15 provisions.

16 Q Are you familiar with the Before
17 2000 Study which was introduced into testimony by
18 the Ratepayer Advocate in this proceeding?

19 A I've skimmed through it. I don't
20 have intimate familiarity with it.

21 Q Mr. West, I'd like to refer you to
22 one of the appendices in that report, Appendix F.
23 Appendix F of the report contains a section of
24 the Federal Telecommunications Act, Section 254,
25 Universal Services.

2 Mr. West, if you could read - - I
3 will refer you to the third page of the Appendix.
4 If you would read aloud from Section the first
5 two sentences of that section entitled "State
6 Authority"?

7 A "A State may adopt regulations not
8 inconsistent with the Commission's rule to
9 preserve and advance Universal Service. Every
10 telecommunications carrier that provides
11 intrastate telecommunications services shall
12 contribute on an equitable and non-discriminatory
13 basis in a manner determined by the state to the
14 preservation in advancement of Universal Service
15 in that state."

16 Q Thank you.

17 Now, Mr. West, the passage you
18 just read, is it your understanding that that
19 passage allows states to provide for additional
20 Universal Service support through a state fund?

21 A Yes.

22 Q And did that passage you just read
23 mention the word "tax" anywhere?

24 A It does not explicitly use the
25 word "tax" but anytime you get into a situation

2 where carriers or customers are contributing to a
3 fund to pay for something like Universal Service
4 at the state level, you are making assessments or
5 taxes or you can candy-coat the language however
6 you want but the bottom line is it is a tax.

7 Q But I believe you answered the
8 word "tax" is not in that section?

9 A Right. But in the English
10 language the word "tax" has many synonyms.

11 Q Is there any synonym of the word
12 "tax" in that section?

13 A When we start to contribute on an
14 equitable and non-discriminatory basis.

15 Q So all contributions - - I'm
16 sorry, please finish your answer.

17 A To a fund, the real life effect of
18 that is somebody being taxed to fund the fund.

19 Q So all contribution in your
20 characterization are taxes?

21 A No, but mandatory contributions
22 start to resemble taxes.

23 Q I'd like to go back to your
24 rebuttal testimony please, page 4. The question
25 at the bottom of page 4 which continues on to the

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2 top of page 5. There I believe you discuss the
3 recommendation of the Ratepayer Advocate and
4 several other witnesses in this proceeding
5 regarding schools and libraries as being served
6 at rates comparable to residential rates.
7 Is that correct?
8 A Yes, I do.
9 Q If I could refer you to page 4,
10 the sentence beginning on line 28, you state that
11 "Bell does not give discounts to organizations
12 merely because they are nonprofit in nature, but
13 only offers a charitable discount from the
14 established rates for business exchange access
15 lines and message units to what could be regarded
16 as equally deserving corporations, associations
17 or institutions that are engaged in charitable
18 and eleemosynary work that furnishes direct aid
19 to the physical health and comfort of human
20 beings."
21 Did I read that correctly?
22 A Yes.
23 Q Is there a written policy that
24 Bell Atlantic uses to decide whether an entity is
25 eligible for charitable deduction in it's rates?